



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.593 of 2020

and

C.M.P. (MD) No.6148 & 6149 of 2020

IFFCO TOKO Insur Company Limited,
through its Branch Manager,
No.82, Preetham Plaza and First Floor,
Chandra Gandhi Nagar, Ponmeni,
Madurai - 625 016.
Madurai Town, Madurai District.

...Appellant/2nd Respondent

Vs.

1.K.Kunjaram
2.Suresh

...Respondent 1/Petitioner
...Respondent 2/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 23.10.2019 passed in M.C.O.P.No.28 of 2018 on the file of the learned Motor Accident Claims Tribunal/Chief Judicial Magistrate/Special Judge, Special Court for Trial of V & AC Act (FAC) of Sivagangai by allowing this appeal.

For Appellant :Mr.V.Sakthivel
For R-1 :Mr.S.Pugalendhi
For R-2 :No appearance

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the Order, dated 23.10.2019 in M.C.O.P.No.28 of 2018 passed by the learned Motor Accident Claims Tribunal/Chief Judicial Magistrate/Special Judge, Special Court for Trial of V & AC Act (FAC) of Sivagangai.

2.It is a case of accident. On 27.12.2016 at 07.45 a.m., the claimant was travelling as a pillion rider in two wheeler bearing Regn. No.TN-63-AA-7059, near Soniaha Temple in Milaganoor Road, the rider of the said two wheeler riding his vehicle in rash and negligent manner and applied break at pit and due to which, the petitioner was fell down. Due to the said accident, the claimant has sustained injuries.



3.The claimant has filed a claim petition in M.C.O.P.No.28 of 2018 on the file of the learned Motor Accident Claims Tribunal/Chief Judicial Magistrate/Special Judge, Special Court for Trial of V & AC Act (FAC) of Sivagangai, seeking compensation.

4.Before the Tribunal, on the side of the claimant one witness was examined as P.W.1 and marked seven documents as Exs.P.1 to Ex.P.7 and Ex.C.1 was marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimant and the insurance company and also on appreciating the evidences on record, the claim petition was allowed in part and directed the appellant/Insurance Company to pay the award amount of Rs.2,51,224/-as compensation, fixed by the tribunal. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed.

6.Heard on either side. Perused the material documents available on record.

7.Eventhough, the name of the 2nd respondent is printed in the cause list, no one is appeared on behalf of him.

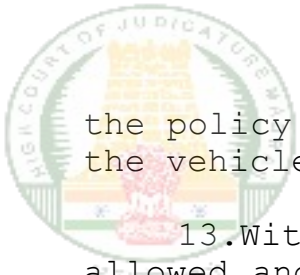
8.The appellant/insurance company has filed this appeal on the ground that the pillion rider of the two wheeler is not covered under policy. It is only 'The Act Policy' only under IMT.

9.The claimant has filed the claim petition in M.C.O.P.No.28 of 2018 for claiming compensation for the injuries sustained in the road accident. When she travelled as a pillion rider in two wheeler to go to Manamadurai, the rider of the two wheeler riding the vehicle in rash and negligent manner and applied brake. Due to which, the claimant fell down and suffered head injury and sustained giddiness and due to the fracture in her Head she suffered Dizziness.

10.The tribunal has awarded a sum of Rs.2,51,224/-as compensation.

11. The learned counsel appearing for the appellant/insurance company raised an objection that the policy is only the 'Act Policy' under IMT rules applicable to the claimant. She has not sustained any permanent disability. There is no coverage under the policy. But, the tribunal has fixed only liability on the appellant/insurance company.

12.All the points raised in the counter, not considered by the tribunal. On perusal of the insurance policy, it is revealed the fact that for passenger personal coverage in IMT paid. Since the claimant is not sustained any disability she could not claim under



the policy from the appellant/insurance company. Only, the owner of the vehicle is liable to pay compensation.

13. With these observations, this Civil Miscellaneous Appeal is allowed and the liability is fixed only the owner of the vehicle/2nd respondent herein. The appellant/insurance company is entitled to refund the deposited award amount, if any. No costs. Consequently, C.M.P.(MD)No.6148 of 2020 is allowed and C.M.P.(MD)No.6149 of 2020 is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Motor Accident Claims Tribunal Judge/
Chief Judicial Magistrate/Special Judge,
Special Court for Trial of V & AC Act (FAC),
Sivagangai.

Copy to

The Section Officer, V.R. Section
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-39988[F] dated 22/12/2021)

C.M.A. (MD) .No.593 of 2020
21.12.2021

SVN(CO)
KB(02.03.2022) 3P 5C